But a very strange thing happened here before me. Instead of bringing an action as one would expect of her and as ordered by the Collector, the claimant before the Collector, Chu Mek Chuan, refrained from doing so. One called Chu Chu Lock, supposedly the adopted son of the deceased, made his appearance instead suing his adopted mother Chu Mek Chuan and the 2nd defendant claiming that the land (in dispute before the Collector) was in fact given to him by the deceased and his adopted mother. It was not difficult to see therefore that on that contention he had to make Chu Mek Chuan, which he duly did, the defendant in the action. What was stranger still was that, nevertheless, the 1st defendant did not, again as one would expect, contest the claim. She did not enter an appearance nor file a defence to it. Apparently my curiosity and puzzle did not end there. During the trial, and not after some surprise to me, the plaintiff's counsel indicated, odd that it might appear to be, that the 1st defendant would be giving evidence for the plaintiff and asked whether it would be proper for her to be appearing to be a defendant when in fact she was a witness and therefore should be heard or be seen to be outside the court's precinct. Odd that the application might appear to be, I could not but agree with counsel more and duly made the order.

The 2nd defendant in her Statement of Defence did not seek to dispute the allegation of facts stated in the Statement of Claim. She merely asked the court to set it aside saying that the plaintiff had, by bringing the action against her, when he or his guardian had not instituted or been a party to the suit before the Collector, had no cause of action to do so. In clearer terms she contended that to bring a collateral dispute before the court between parties other than those under the Collector's order and outside the issue therein stated, is an abuse of the process of the court.

It is time for me to consider, therefore, whether the plaintiff has a cause of action or to put it more correctly a right of action against the defendants. With respect, I must say with no hesitation whatever, he clearly did not have. It was beyond any doubt, from the agreed bundle at P25, that the action was made purportedly pursuant to the Collector's direction to the parties before him to refer under section 14 their dispute to court. The parties were therein stated to be between Chu Mek Chuan and Keong Kim Bee, the 1st and 2nd defendants in this action. The plaintiff could not therefore seek to bring an action purportedly under the said direction because he was not a party to the suit earlier and therefore had no *locus standi* here. To entertain such an action would be to make the court a party to a move to defeat the object of the Collector's reference which was to resolve between the parties therein stated the dispute before it and which must therefore, now, because of the failure of the said parties to bring an action as so directed, on the dispute therein stated, be under the said Section determined by the Collector.

I shall therefore dismiss the plaintiff's action with costs.

Claim dismissed.

Solicitors: *Wilson & Co.; Foo Say Ghee & Co.*

YU OI YONG & ANOR. v. HO TOONG PENG & ORS.

[A.C.J. (Chang Min Tat J.) March 25, 1976]
[Kuala Lumpur — Originating Summons No. 215 of 1968]

Practice and Procedure — Appeal against Senior Assistant Registrar's decision — Whether accounts had been properly lodged and were in the proper form — R.S.C., 1957, O. 33 r. 4, O. 38 r. 23 & O. 55 r. 75.

Accounts — Non-compliance with form in rules — Whether excusable — R.S.C., 1957, O. 33 r. 4, O. 38 r. 23 & O. 55 r. 75.

This is an appeal from the decision of the learned Senior Assistant Registrar overruling the objections of the third defendant to the form of accounts which were submitted by the receiver in pursuance of an order of court.

The accounts submitted were nothing more or less than a chronological order of the receipts and payments of the firm concerned and the entries were unnumbered. The accounts were nowhere near the forms set out in the rules.

Held, allowing the appeal: (1) there should be some adherence to the rules of court, unless required by circumstances, if there is to be any meaning or purpose in such rules;

(2) it should be realised by practitioners as well as by judges that while strict and slavish adherence to forms and rules can sometimes hinder the administration of justice, these forms and rules should not be disregarded for no reason whatsoever, since they embody the experience of the courts over the years in the cause of speedy and efficient administration of justice;

(3) an order will be made that the receiver do file proper accounts in accordance with the Rules within two months from the date hereof.

ORIGINATING SUMMONS.

Wong Weng Kwai for the plaintiffs.

Wong Chong Wah for the 1st & 2nd defendants.

Chin Yew Meng for the 3rd defendant.

Vincent Ponniah for the Receiver.

Chang Min Tat J.: This is an appeal from the decision of the learned Senior Assistant Registrar overruling the objections of the third defendant to the form of accounts which were submitted by the receiver in pursuance of an order of court.

Incidentally, the Senior Assistant Registrar was rather critical of the somewhat inordinate delay that has taken place in a very long outstanding case. He did not allude to another objection that could be taken. The actual terms of the order for the accounts that was obtained from the court did not include any provisions for the time in which surcharges and falsifications should be taken. Parties are, with respect, unhindered as to the time in which they could take to implement the order. The absence of such provisions could and in this case must be seen to make for delay.

But that is all very much by the way. I had strictly to decide in this appeal whether the Senior Assistant Registrar was right in his decision that the accounts had been properly lodged and the accounts were in the proper form so that the court might properly pass the accounts, in view of the objections that were taken. There were serious arguments before the Registrar and before me, but I think the decision is reasonably clear. Order 33 rule 4 of the Rules of the

Supreme Court requires the accounts to be verified by affidavit, numbered consecutively and left and filed in the Registry. It is particularly specified in this rule that the accounts shall be referred to by the affidavit as an exhibit. It must not be annexed or referred to as annexed thereto, (see also Order 38 rule 23).

Order 55 rule 75 provides that the prescribed form shall be used for the respective purposes therein mentioned with such variations as circumstances may require. At this stage a comparison should be made with the corresponding rule in the Annual Practice. The Annual Practice refers to forms Nos. 11-24 in Appendix I. Now it is to be observed that the marginal note in the 1957 Rules of the Supreme Court, reference was made to these very forms Nos. 11-24 in Appendix I. There can therefore be no doubt whatsoever that while our rule prescribes generally for the adoption of the forms prescribed, this prescription has a particular reference to the forms Nos. 11-24 of Appendix I. A reference to the Annual Practice will indicate the particular forms for the compilation of the accounts.

On December 15, 1973 an affidavit was affirmed by the receiver that "I have this day filed a Statement of Accounts marked 'A' now produced and shown to me which according to the best of my knowledge, information and belief sets out the receipts and payments of Wah Hup Engineering Works from September 15, 1969 to November 17, 1973." A comparison with Form No. 11 of Appendix I in Part 4 of the Annual Practice (1962 A.P. page 2442) will indicate how completely inadequate the affidavit of the receiver is. But I am prepared to accept that this affidavit did, however inadequately, verify the statement of accounts. But the accounts submitted were nothing more or less than a chronological order of the receipts and payments of the firm concerned. It is, in other words, a reproduction of a journal. The entries were unnumbered, but apparently it was conceded by all parties that this difficulty could be got over by numbering the items as they were gone through. The accounts were however nowhere near the forms set out in the rules (see 1962 A.P. pages 2446-2447). There is further no summary of the accounts as in the forms provided. Under the circumstances, I am completely at a loss to understand how they can be justified as being variations required, justified or permitted by the circumstances. No circumstances had been shown to justify the variations when the variations themselves were a complete departure from the rules.

There should, in my view, be some adherence to the rules of court, unless required by circumstances, if there is to be any meaning or purpose in such rules.

It should, I think, be realised by practitioners as well as by judges that while strict and slavish adherence to forms and rules can sometimes hinder the administration of justice, these forms and rules should not be disregarded for no reason whatsoever, since they embody the experience of the courts over the years in the cause of speedy and efficient administration of justice.

The appeal against the order of the learned Senior Assistant Registrar is therefore allowed and an order will be made that the receiver do file proper accounts in accordance with the Rules within two months from the date hereof. There will be a further order that all parties file their respective surcharges and falsifications within one month from the filing of such accounts. I see that the third defendant in applying for these orders had asked for costs to be in the cause but I think it is necessary that costs of the appeal, in view of the resistence to the application before the Senior Assistant Registrar and to the appeal, be provided for. I therefore order that the third defendant shall have his costs from the Estate but that all the parties should bear their own costs.

Appeal allowed.

Solicitors: *Mah-Kok & Din; Skrine & Co.; Allen & Gledhill; Ng Ek Teong & Partners.*

PUBLIC PROSECUTOR v. MOHAMED BIN MAJID

[O.Cr.J. (Harun J.) May 14, 1976]
[Kuala Lumpur — Raub Criminal Trial No. 4 of 1975]

Criminal Law and Procedure — Rape — Allegation of rape proven — Identification of assailant by prosecutrix — Corroboration — Whether safe to convict without corroboration.

Penal Code, s. 376 — Rape — Corroboration — Whether safe to convict without corroboration.

The prosecutrix was raped whilst working on a rubber estate some distance from her house. Consequent upon this, the prosecution sought to prove that the accused was the assailant on the following grounds: (i) the prosecutrix identified the accused at an Identification Parade on March 15, 1975; (ii) she identified him again in court; and (iii) he was seen near the scene of the crime shortly after it was committed.

Evidence showed that the identification parade was held 4 days after the incident. The other boys in the parade were of lighter skin than the accused whose complexion was very dark. At the trial the prosecutrix pointed to the dock when the accused was bending down and looking at the floor.

Held: (1) in a prosecution for rape it is unsafe to convict unless there is corroboration on the allegation of rape and corroboration on the identification of the assailant;

(2) the identification parade was unfair to the accused and the subsequent identification in court was of little significance.

Cases referred to:-

(1) *Public Prosecutor* v. *Mardai* [1950] M.L.J. 33.
(2) *Balwant Singh* v. *Public Prosecutor* [1960] M.L.J. 264.
(3) *Ah Mee* v. *Public Prosecutor* [1967] M.L.J. 220.
(4) *Din* v. *Public Prosecutor* [1964] M.L.J. 300.
(5) *Regina* v. *Trigg* [1963] 1 W.L.R. 305.

CRIMINAL TRIAL.

Abdul Kadir bin Musa (Deputy Public Prosecutor) for the Public Prosecutor.

Wai Wah Kwai (*Ajit Singh* with him) for the accused.

Harun J.: In this case the accused was charged with rape. At the close of the case for the prosecution I held that the prosecution had failed to establish a *prima facie* case and accordingly acquitted and discharged the accused. My reasons are as follows:

There were two issues at the trial. Firstly, whether the prosecutrix was raped and secondly, whether it was the accused who committed the offence.